

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 2 May 2017

Public Authority: North Somerset Council
Address: Town Hall
Walliscote Grove Road
Weston-super-Mare
Avon
BS23 1UJ

Decision (including any steps ordered)

1. The complainant has requested information relating to work carried out by a contractor on a crematorium owned by the council. The council said that it had provided all of the relevant information to the complainant. The complainant disagrees and considers that further information should be held by the council.
2. The Commissioner's decision is that on a balance of probabilities no further information is held by the council falling within the scope of his requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 14 January 2016 the complainant wrote to the council and requested information in the following terms. The request was given the reference 752496 by the council:

"It does appear relevant, from the what has occurred, that a request should be made under the Freedom of Information Act for details of all internal communications between Council personnel, Council personnel and Councillors, including meetings and documents associated with meetings, together with details of all communications between the Council, Dignity and those acting for or on behalf of Dignity, together with details of meetings, associated documents and all site visits by Officers and Councillors, whether paid for by way of Council Expenses or hospitality and by whom. This relates to all documentation not previously released. To be specific the above relates to the Council Contract with Dignity and management of the contract relative to the existing Grounds and new development(s) and all aspects relating to Planning Applications made and on behalf of Dignity and all aspects of the consideration of those applications.

5. Request 924296 was submitted on 4th May, 2016:

"I note that the information requested from the Council's Solicitor has not been supplied regarding what Committee Support Personnel recorded/heard at the Planning Committee Meeting in December 2015. It does appear appropriate, therefore, to request under the Freedom of Information Act that the notes taken and records of all Council Officers whether they be for record purposes, file notes or diary records be supplied in respect of the Committee meeting and Application 14/P/2274/F. In view of the apparent discrepancy/interpretation of the Committee decision in February 2015, it is requested that the same information be supplied in respect of that meeting. The Council may make audio recordings of Committee Meetings such that matters of dispute and record may be referred to at a later date since the Council's Solicitor advised that your Council does not keep accurate formal minutes of meetings. If such recordings are taken (it would not have been difficult due to the microphone system employed) you are requested, under the Freedom of Information Act, to provide such Audio recordings of the Planning Committee Meetings in respect of Application 14/P/2274/F.

6. This request was accompanied by several file attachments, one of which included a summary table containing queries and comments on 29 items arising from previous disclosures of information by the council, and

other related communication dating back to 2012, as well as:

- two new queries in response to a letter from the council on 17th February 2016;
 - two new items. Both of these items were unreferenced however they related to previous communications as the council's response to the original comments was included;
 - 11 new queries which relate to the information disclosed under a previous request for which the council provided the reference 752496.
7. Request 931796 was also submitted on 4th May, 2016 and contained three parts, all of which were extracted from the documentation schedule which was referred to under Request 924296.
8. Request 984696 was submitted to the council on 13th June 2016, requesting disclosure of:
- "The original Crematorium planning approval granted to Woodspring District Council, as referred to in the Weston Town Council Planning Meeting by Cllr Fred Parsons (who we were informed was on the Planning Committee at the time the application was considered) and it would appear that the whole approval document and particularly the restrictions placed upon the Council in that Planning Approval regarding Access to the Crematorium are of relevance."*
9. The council's response on each occasion was to provide information and, ultimately, to say that the complainant has received all of the information it holds which falls within the scope of his requests.
10. Following an internal review the council wrote to the complainant on 29 July 2016 and said that it had provided all of the information which it holds to him.

Scope of the case

11. The complainant contacted the Commissioner on 28 August 2016 to complain about the way his request for information had been handled.
12. The complainant has said to the Commissioner that in 2009 the council awarded a contract to Dignity to run the crematorium service. In November 2011, Dignity was granted planning permission to undertake work to the crematorium building. He said that during these works they suddenly started work on the car park at the rear of the crematorium for which he understands that a planning application should have been made and approval granted by the council. He said that Dignity

continued this work through to completion and applied for retrospective planning permission in May 2013 (Application 13/P/0675/F). Retrospective Planning Approval was granted by the council in September 2013, some 12 months after the works had commenced.

13. During this period the council was supervising this contract and he argues that there must have been meetings and agreement with the council over the closure of the crematorium for services, the phasing of the construction work to permit safe access for residents visiting the crematorium grounds and restrictions as to noise, vibration and the like whilst the work to construct the car park and undertake associated drainage works and surface the crematorium access road. Additionally this would have been a necessity because of the large construction vehicles requiring access to the site to haul away surplus material and bring in construction materials.
14. He argues that in response to the requests the only contract monitoring/review/details of and minutes of meetings disclosed to him were in the form of the Dignity contract monitoring forms. He said that the documentation which was disclosed does not cover the full period from November 2011, details of meetings and minutes under the contract and associated works have not been supplied and the information that was supplied appears to fall short in that it does not provide full details of who undertook the 'contract monitoring' on behalf of the council and with whom on Dignity's side it was undertaken. Some of the forms were not dated, and they were not signed by those undertaking the reviews.
15. He argues that as the contract monitoring forms were also supposed to be quarterly reviews as well as annual reviews, there appears to be a shortfall in the number of reviews supplied.
16. He therefore considers it inconceivable that the council has disclosed all the information under the requests he has made to it.
17. The Commissioner therefore considers that the complaint is whether the council has provided all of the information to the complainant in response to his requests.
18. The council initially contacted the Commissioner concerned that it did not fully understand the scope of the complaint and asked the Commissioner to pinpoint what this was. During a telephone call with the council the Commissioner suggested that the council initially concentrate on matters outlined in a review letter relating to request 931796. The council therefore initially responded merely dealing with the information in respect of request 931796. However the council was

adamant that the complainant had received all of the information it holds in respect of the crematorium.

19. The Commissioner therefore contacted the council, again by telephone, and asked it to confirm whether its response was therefore applicable to all of the above requests. The council confirmed by telephone on 29 March 2017 that its response reflected its position as regards all of the above requests. It considers that no further information is held relating to the Crematorium and where information has been located in response to his request it has already been disclosed to him.
20. The Commissioner's decision notice therefore addresses whether further information is held in respect of all of the above requests.

Reasons for decision

Is the information environmental information

21. The Commissioner notes that the request relates to work being carried out on a crematorium, including specific development work. As such the Commissioner considers that the requested information falls within Regulation 2(c) of the EIR as it is information on an activity which will affect the factors outlined in Regulation 2(a), which states that

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

22. The Commissioner is therefore satisfied that the information is environmental information and should be considered under the EIR rather than the FOI Act.
23. Although the council has responded under the FOI Act, in this case there is no material difference in the Commissioner's consideration of the council's response – effectively its argument is that it has provided all of the information which it holds falling within the scope of the request to the complainant and that it holds no further information.

24. The question for the Commissioner to consider is therefore whether any information is held falling within the scope of the requests which has not yet been disclosed.
25. Regulation 5 states that subject to the application of exemptions and/or other qualification provided in the Regulations, a public authority that holds environmental information shall make it available on request.
26. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
27. The Commissioner asked the council to explain the searches it had carried out for further relevant information, whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. She also enquired whether there was any legal requirement or business need for the council to hold the information.
28. The council said that given the widespread nature of the requests and a to lack of clarity over what the complainant's requests were in fact requesting, to err on the side of caution, it has provided the complainant with every piece of recorded information which it holds regarding the crematorium.
29. It confirmed that the majority of the information which he had requested has never been held by the council. It said that the reality of the financial climate in local government over the past ten years has forced the council to work in a different way to what the complainant might expect it to. Due to the need to streamline processes it's administrative processes have changed over the last few years and information which used to be recorded is not recorded any more. It clarified that whilst the complainant may have arguments with this approach regarding good governance due to this lack of records, this is not an argument to be considered under either the FOI Act or the EIR.

30. The council stated that it meets with the contractor both at the Crematorium and at other sites that it is responsible for on a regular basis to deal with matters. These meetings concern Dignity's duties in relation to the management of closed churchyards, cremation fees etc., as these are the main areas of concern to both parties. It said that these meetings overrode the requirements for minuting quarterly contract meetings, as there was never anything to minute at these meetings in terms of non-conformance and matters for improvement. It clarified that where there are meeting notes, these have been disclosed to the complainant in response to previous requests.
31. This, in part addresses part of the complainant's argument that not all meeting records and quarterly meeting notes have been disclosed to him in response to his requests.
32. As regards the searches it has carried out it said that the records are mostly held electronically however some manual records exist, i.e. within the planning file.
33. It said that the requests were sent to all known record holders within the council, including council officers and councillors as well as Dignity for them to confirm whether relevant information was held by them. On occasions when new record holders came to light while it was reviewing records submitted, these were also contacted and asked to submit any records held.
34. The majority of records located were either stored in individual officers' e-mail accounts or in the council's electronic filing system. Records specifically related to the planning application are held on the planning file system. All of these locations have been searched and over the course of the complainant's requests, all available records have been released.
35. As regards the searches of its electronic records it confirmed that only searches of networked resources and emails were necessary; council policy restricts information from being stored on local hard disks, and for laptop computers working offline, files are synchronised to the network when they are connected back to the network.
36. It said that officers store unstructured electronic records relating to the crematorium, including e-mails, in named folders as part of a shared file system. Whilst the network storage location does not contain the robust governance of a document management system, it provides structure to ensure that records are easily identified and located.

37. In handling an original request, individual officers are tasked with locating information within their own e-mail records and used a variety of search terms as well as their own knowledge of information they hold.
38. For an internal review, e-mail searches are undertaken by the council's ICT services department under instruction from the Information Governance team and without the involvement of individual officers and councillors. Many different combinations of search terms were used to identify information that would potentially fall into scope of the complainant's requests including:
- *"Dignity"*
 - *"Crematorium"*
 - *"Contract Management"*
 - *"Performance Report"*
 - *"Burial Capacity"*
 - *"Burial Space"*
 - *"Harris Lamb"*

Conclusions

39. As stated above, in cases where there is a question as to whether any further information is held the Commissioner must make her decision based on the balance of probabilities. She will however determine whether there are any areas where there is evidence that information is held which has not been located or provided. In the absence of this, if the public authority demonstrates that it has carried out appropriate searches of the relevant areas of the authority, to an appropriate degree, then she will generally be led to a decision that no further information is held.
40. Neither the Commissioner nor the council can be absolutely sure that there is no more information falling within the scope of the entirety of the complainant's requests. The council has said to the Commissioner, and it is obvious from the correspondence she has seen, that the complainant's requests are voluminous and often overlap to the point where the council has, at times, been unsure of the extent of the information being requested. The Commissioner has also found that the requests are difficult to navigate through to determine exactly what information was being requested. The complainant has consistently followed up requests by asking further questions on similar and overlapping issues. In all, the Commissioner notes that the complainant's requests have placed a significant burden on the council.

41. The council has not however sought to apply Regulation 12(5)(b) (manifestly unreasonable) to the requests but has sought on each occasion to identify the information which was being requested and disclose this to the complainant.
42. Coupled to this there have been some requests made by the complainant where he has sought internal reviews of decisions after the time limit of 40 days set by Regulation 11(2). For clarity, a public authority is under no duty to consider requests for reviews where they are made outside of this timeline.
43. As noted in paragraph 21 above, given the extent of the complainant's requests the council argues that it has now provided all of the information it holds to the complainant over the course of responding to all of his requests. It has not sought to apply exemptions to the requested information but has disclosed information where this has been identified from the requests and located.
44. The complainant has said that it is inconceivable that further information is not held, and the Commissioner understands that it is often impossible for complainant's to provide any evidence to that effect. Nevertheless the Commissioner notes that the council's responses have been open and it has admitted in the past where it has misunderstood requests or simply failed to respond to parts of the requests. It has subsequently carried out searches for the relevant information and provided this to the complainant where information has been found.
45. Having considered the evidence provided by the complainant and the council the Commissioner's decision is that on a balance of probabilities the council has now provided all of the information falling within the scope of the requests.

Right of appeal

46. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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